

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JAMES ROBERT TAYLOR,  
*Petitioner.*

No. 2 CA-CR 2020-0051-PR  
Filed June 30, 2020

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).*

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Petition for Review from the Superior Court in Cochise County  
No. S0200CR201500800  
The Honorable John F. Kelliher Jr., Judge

**REVIEW GRANTED; RELIEF DENIED**

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James R. Taylor, Florence  
*In Propria Persona*

STATE v. TAYLOR  
Decision of the Court

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MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Judge Espinosa and Judge Eckerstrom concurred.

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E P P I C H, Presiding Judge:

¶1 In this petition for review, brought pursuant to Rule 33, Ariz. R. Crim. P.,<sup>1</sup> James Taylor seeks review of the trial court’s order dismissing his notice of post-conviction relief. We will not disturb the court’s ruling unless it abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). We find no such abuse here.

¶2 Pursuant to a plea agreement in July 2016, Taylor was convicted of two counts of attempted sexual exploitation of a minor. In November 2016, the trial court imposed the presumptive, ten-year prison term for the first count and, for the second, suspended the imposition of sentence and placed Taylor on lifetime intensive probation. In September 2018, Taylor filed a pro se notice of post-conviction relief, indicating on the form notice that he intended to raise a claim of ineffective assistance of counsel, and also asserting his late filing was not his fault, there was a significant change in the law and he was actually innocent. *See Ariz. R. Crim. P. 33.1(a), (f), (g), (h)*.

¶3 Between November 2018 and May 2019, Rule 33 counsel, Harriette Levitt, filed three requests for extensions to file a petition, which the trial court granted.<sup>2</sup> In May 2019, Levitt filed a notice stating she had

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<sup>1</sup> Our supreme court amended the post-conviction relief rules, effective January 1, 2020. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). “Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.” *State v. Mendoza*, No. 2 CA-CR 2019-0281-PR, n.1, 2020 WL 3055826 (Ariz. App. June 9, 2020) (“amendments apply to all cases pending on the effective date unless a court determines that ‘applying the rule or amendment would be infeasible or work an injustice’” (quoting Ariz. Sup. Ct. Order R-19-0012)).

<sup>2</sup>When no petition was filed by the April 12, 2019, due date, the trial court dismissed Taylor’s “petition” on April 17, 2019; however, in May 2019, it granted Levitt’s motion to reinstate, in which she asserted the most

STATE v. TAYLOR  
Decision of the Court

reviewed the record but could “find no colorable claims” to raise in a post-conviction petition; the trial court gave Taylor until July 15 to file a pro se petition. The court subsequently granted Taylor’s additional extension requests, ultimately giving him until September 23, 2019, to file a pro se petition. On the September 23, 2019, due date, Taylor mailed a motion to enlarge the time for filing his petition for an additional thirty days. Apparently unaware that Taylor had mailed his motion on September 23, 2019, the court dismissed his notice of post-conviction relief on September 27, 2019, noting he had not filed a petition in the allotted time.

¶4 In October 2019, Taylor filed a motion to reinstate the post-conviction proceeding “as improvidently dismissed,” pointing out that his most recent extension request, which was mailed on the petition due date, was timely filed, and asking for an extension until November 25, 2019. *See State v. Goracke*, 210 Ariz. 20, ¶¶ 5, 10, n.3, (App. 2005) (applying, to Rule 32 petitions for review, “prisoner mailbox rule . . . ‘that a pro se prisoner is deemed to have filed his [petition for review] at the time it is delivered, properly addressed, to the proper prison authorities to be forwarded to the clerk of the . . . court’”) (quoting *Mayer v. State*, 184 Ariz. 242, 245 (App. 1995)). On November 5, 2019, the trial court acknowledged it had reviewed Taylor’s October 2019 motion to reinstate and finding “it appearing appropriate,” the court directed the state to respond to the motion by December 2, 2019, stating it would take the matter under advisement on December 4, 2019. The state did not file a response, and in its December 16, 2019, order the court recited the dates of the extensions it had granted to Taylor, noted that no pro se petition had been filed in the allotted time, and dismissed the post-conviction proceeding.

¶5 In January 2020, Taylor filed a “Motion to Vacate December 16, 2019 Order as Improvidently Issued and Violative of Due Process,” asserting he could not have filed a Rule 33 petition without an order granting his October 2019 motion to reinstate, which the trial court had not yet ruled upon, and further pointing out that the state had not responded to that motion, despite the court’s order directing it to do so. In a January 27, 2020 ruling, which is the subject of this petition for review, the court summarized the procedural history of this case, found “that the Petition for Post-conviction Relief remains dismissed,” and denied Taylor’s “Motion to Vacate the December 16, 2019 Order.” This petition for review followed.

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recent delay was not Taylor’s fault, effectively granting the third extension request. Although the trial court generally used “petition” instead of “notice” throughout this case, we refer to Taylor’s notice as such.

STATE v. TAYLOR  
Decision of the Court

¶6 On review, Taylor argues the trial court abused its discretion by dismissing his post-conviction proceeding “and/or” by failing to reinstate that proceeding. He provides a detailed summary of the procedural history of this case, pointing out, as he did below, that his ability to conduct legal research was hindered by limited access to the prison library and other research materials, apparently suggesting this constituted extraordinary circumstances supporting his September 23, 2019, extension request. *See* Ariz. R. Crim. P. 33.7(a)(3) (on showing of “good cause,” court may grant thirty-day extension of time to file petition for post-conviction relief and, on showing of “extraordinary circumstances,” court may grant additional thirty-day extensions). Taylor also asserts the court should have notified him it intended to dismiss the Rule 33 proceeding before it did so. He maintains the court improperly “blamed” him for not filing a petition between September 23 and December 16, 2019, asserting he could not have done so without an order reinstating the Rule 33 proceeding.

¶7 Absent an abuse of discretion, which Taylor has not established, we will not interfere with the trial court’s ruling. *See* Ariz. R. Crim. P. 33.7(a)(3) (decision to grant extension to file Rule 33 petition discretionary). We acknowledge the unusual procedural posture of this case, to wit, that the court dismissed Taylor’s Rule 33 proceeding without ruling on his pending motion to reinstate, particularly after having found it “appropriate” to order the state to respond to that motion. However, based on the record before us, including the numerous extension requests granted by the court in this matter, we cannot say the court abused its discretion by essentially denying Taylor’s September 23, 2019, extension request and accordingly dismissing his notice of post-conviction relief.

¶8 To the extent Taylor contends, without support, that the trial court was not permitted to deny his September 23, 2019, extension request because it was timely, we note that it is within a court’s discretion to reject an otherwise timely extension request, a decision that was implicit in the court’s January 2020, ruling when it found the post-conviction proceeding “remain[ed] dismissed.” Moreover, we can infer from the court’s January 2020 ruling that it did not find the asserted circumstances regarding Taylor’s difficulty in accessing legal research materials sufficiently extraordinary to merit yet another extension, a decision within its discretion to make. *See* Ariz. R. Crim. P. 33.7(a)(3). Nor was the court required to provide Taylor with notice that it intended to dismiss the proceeding, as he suggests.

STATE v. TAYLOR  
Decision of the Court

¶9 Accordingly, we grant review but deny relief.